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12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15 DEMETRIC DI-AZ, OWEN DIAZ AND
LAMAR PATTERSON

16 Plaintiffs,

17 v.

18 TESLA, INC. DBA TESLA MOTORS,
19 INC., CITISTAFF SOLUTIONS, INC.;
WEST VALLEY STAFFING GROUP;
20 CHARTWELL STAFFING SERVICES,
INC.; NEXTSOURCE, INC.; and
21 DOES 1-10, inclusive

22 Defendants.

Case No. 17-cv-06748-WHO

**DEFENDANT TESLA, INC.'S
ADMINISTRATIVE MOTION TO FILE
DOCUMENTS UNDER SEAL IN SUPPORT
OF DEFENDANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: December 18, 2019
Time: 2:00 p.m.
Courtroom: 2, 17th Floor
Judge: Hon. William H. Orrick

Trial date; March 2, 2020
Complaint filed: October 16, 2017

*[Filed concurrently with the Declaration of Patricia
M. Jeng and Proposed Order]*

Pursuant to Civil Local Rules 7-11 and 79-5 of the Northern District of California, as well as Judge Orrick's Standing Order regarding administrative motions to seal, Defendant Tesla, Inc. dba Tesla Motors, Inc. ("Tesla"), submits this Administrative Motion to File Under Seal and respectfully requests that the Court issue an Order sealing the physical copies of the Exhibits identified below to the Declaration of Patricia M. Jeng In Support of Tesla's Motion for Partial Summary Judgment as to the Claims for Unruh Civil Rights Act and Punitive Damages. This motion is based on the memorandum of points and authorities and the Declaration of Patricia M. Jeng In Support of the Administrative Motion to File Documents Under Seal In Support of Defendant's Motion for Partial Summary Judgment ("Jeng Decl."). Tesla identifies the following documents and portions of documents it proposes be sealed:

Document	Portion(s) To Be Sealed	Designating Party
Exhibit 1: Deposition of Owen Diaz, taken on May 22, 2018 and Deposition Exhibits.	Excerpts from Owen Diaz's May 22, 2018 deposition testimony and Deposition Exhibit No. 13 (Bate stamped TESLA-0000043 – TESLA-000046) and Deposition Exhibit No. 24 (Bate stamped TESLA-0000001)	Tesla, Inc.
Exhibit 2: Deposition of Owen Diaz, taken on December 3, 2018.	Excerpts from Owen Diaz's December 3, 2018 deposition testimony	Tesla, Inc.
Exhibit 4: Deposition of Demetric Di-az, taken on May 15, 2018.	Excerpts from Demetric Di-az's May 15, 2018 deposition testimony	Tesla, Inc.
Exhibit 5: Deposition of Demetric Di-az, taken on December 4, 2018.	Excerpts from Demetric Di-az's December 4, 2018 deposition testimony	Tesla, Inc.
Exhibit 10: Exhibits to Deposition of Edward Romero, taken on November 30, 2018.	Deposition Exhibits from Edward Romero's November 30, 2018 deposition: Deposition Exhibit No. 42 (Bate stamped TESLA-0000510); Deposition Exhibit No. 43 (Bate stamped TESLA-0000511); Deposition Exhibit No. 55 (Bate stamped TESLA-0000641); Deposition Exhibit No. 56 (Bate stamped TESLA-0000135 – TESLA-0000136); Deposition Exhibit No. 65 (Bate stamped TESLA-0000127- TESLA-0000128)	Tesla, Inc.
Exhibit 12: Exhibits to Deposition of Victor Quintero, taken on June 7, 2018.	Deposition Exhibits from Victor Quintero's June 7, 2018 deposition: Deposition Exhibit No. 38 (Bate stamped TESLA-00000020-TESLA-0000024); Deposition Exhibit No. 39 (Bate stamped TESLA0000025- TESLA0000029)	Tesla, Inc.

Document	Portion(s) To Be Sealed	Designating Party
Exhibit 17: Exhibits to Deposition of Wayne Jackson, taken on May 17, 2019.	Deposition Exhibits from Wayne Jackson's May 17, 2019 deposition: Deposition Exhibit No. 123 (Bate stamped TESLA-0000629 – TESLA-0000630); Deposition Exhibit No. 124 (Bate stamped TESLA-0000635-TESLA-0000636); Deposition Exhibit No. 125 (Bate stamped TESLA-0000644); Deposition Exhibit No. 128 (Bate stamped TESLA-0000020 – TESLA-0000024)	Tesla, Inc.

All of the deposition testimony and deposition exhibits identified above were previously designated as "Confidential" pursuant to the parties' Stipulated Protective Order. Dkt. 50. Tesla requests that these documents be filed under seal because the parties have specifically stipulated that the documents are confidential. Jeng Decl., ¶¶ 2-3.

TESLA'S DOCUMENTS SHOULD BE SEALED

In addition to complying with the Parties' Stipulated Protective Order, the deposition testimony and deposition exhibits are independently qualified to be protected from being filed in the public record because they provide information protected by the privacy rights of third parties granted by the California Constitution. The documents contain information that is protected by law, and thus sealable under Civil Local Rule 79-5.

The documents relate to alleged events that occurred during plaintiffs' work with Tesla which contain personnel information from and about other non-parties and Tesla employees or contractors. *See* Jeng Decl., ¶¶ 3-9. The documents contain private personnel and workplace information about Tesla employees and contract workers who are not parties to this litigation.

It is well established that California workers have a constitutional right to privacy as to their private, confidential information. Cal. Const. Art. I, sec. 1. The right to privacy includes confidential information contained in personnel-related documents and other personal identifying information. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003) (acknowledging privacy interests implicated by sensitive, personal identifying information); *see also Lee v. Pep Boys-Manny Moe & Jack of California*, No. 12-CV-05064-JSC, 2015 WL

1 9268118, at *4 (N.D. Cal. Dec. 21, 2015) (noting that an employee's personnel records from
2 employment are subject to California's constitutional right to privacy). Additionally, sensitive and
3 private information of third parties to a litigation ordinarily should be sealed to protect the non-
4 party from improper disclosure. *See Foltz*, 331 F.3d at 1137.

5 As described above, Exhibits 1, 2, 4, 5, 10, 12, and 17 attached to the Jeng Declaration
6 should be sealed because they contain personnel information and workplace information about
7 Tesla employees and contract workers who are not parties to this litigation. Exhibit 1 contains
8 information related to individual work history, information about an individual's family member
9 and that family member's medical and health condition. Exhibit 10, 12, and 17 also contains
10 information regarding complaints, confidential investigations, and discipline record of individuals
11 not party to this litigation. Disclosing such confidential information would constitute an invasion
12 of privacy rights of former and current employees and/or contractors. Jeng Decl., ¶ 3-9.

13 In addition to personnel information, many of the documents also contain information
14 about workplace complaints and internal communications regarding the investigation of these
15 matters and the discipline records of employees and contract workers who are not parties to this
16 litigation. This type of information is not only protected by the privacy rights discussed above,
17 but it is also sensitive, non-public information relating to Tesla's workplace complaints and any
18 potential discipline or recommendations for discipline of employees and contract workers. Jeng
19 Decl., ¶¶ 7-9.

20 Information relating to investigations of employee misconduct is properly sealed from the
21 public because releasing such information could damage or impair an employer's ability to
22 conduct investigations in the future. *See Genentech, Inc. v. JHL Biotech, Inc.*, 2019 U.S. Dist.
23 LEXIS 35177 (N.D. Cal. March 5, 2019). In *Genentech, Inc.*, the court sealed documents
24 regarding an internal investigation dealing with employee misconduct, reasoning that such
25 documents and information would reveal to the public the company's procedures and tools when
26 conducting sensitive internal investigation into suspected employee misconduct. *Id.*

27 Likewise, here, Exhibits 4, 10, 12, 17 attached to the Jeng Declaration should be sealed
28 because the exhibits contain sensitive information about workplace misconduct and investigations

1 relating to the alleged misconduct that have not been disclosed to the public. The documents
2 should be filed under seal, like in *Genentech*. Otherwise, disclosure of the documents would
3 likely undermine Tesla's ability to engage in workplace investigations and potentially reveal
4 confidential business information related to the procedures and tools employed during internal
5 investigations.

6 **CONCLUSION**

7 For the reasons set forth above and based on the accompanying Declaration of Patricia M.
8 Jeng, Tesla respectfully requests that the Court grant Tesla's motion and enter an Order sealing the
9 documents identified above and in the Declaration of Patricia M. Jeng.

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11 Dated: October 29, 2019

12 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

13
14 By /s/ Patricia M. Jeng
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